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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Effects of structural adjustment policies and foreign debt on the full enjoyment of
human rights, particularly economic, social and cultural rights**

**Report submitted by Mr. Bernard Mudho, independent expert on the effects of
structural adjustment policies and foreign debt on the full enjoyment of all
human rights, particularly economic, social and cultural rights**

Summary

This annual analytical report has been prepared pursuant to Commission resolution 2004/18, which requested the independent expert, *inter alia*, to draft general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments.

In this report, the independent expert offers some elements that may be considered in further elaborating draft general guidelines, based on the review of relevant past work of the Commission and Sub-Commission on the Promotion and Protection of Human Rights, as well as views and suggestions solicited from Member States and international and regional financial institutions on possible elements for such general guidelines. The final report on this subject will be submitted to the Commission at its sixty-second session in 2006.

As part of his annual analytical report, this report also outlines his activities and some significant recent developments with regard to debt sustainability issues and structural adjustment policies. The report particularly highlights the World Bank's new approach to debt sustainability, which advocates country-specific approaches in developing appropriate external borrowing strategies. He also notes with interest the recent shift within the World Bank's operation from the old one-size-fits-all structural adjustment lending to more streamlined development policy lending instruments that emphasize the importance of country ownership.

Such new developments would obviously have a bearing on developing the proposed general guidelines requested by the Commission. The independent expert would like to record his appreciation to the World Bank and the IMF for their continued cooperation and for the open and frank dialogue he had in his annual consultations with these institutions, which he hopes will continue. The independent expert also had positive cooperation with the Financing for Development Office of the Department of Economic and Social Affairs of the United Nations in seeking ways to contribute to the processes entrusted with the follow-up to the International Conference on Financing for Development.

The report concludes with recommendations for the next steps in further elaborating guidelines, including a possibility to organize an expert consultation inviting international financial institutions to contribute. The independent expert also seeks support and guidance from the Commission with regard to, *inter alia*, developing additional ideas on the roles and responsibilities of private creditors, and further contributing to the follow-up process of the International Conference on Financing for Development; and facilitating his consultations and exchanges of views with concerned intergovernmental bodies and institutions, including relevant committees of the General Assembly. The independent expert also suggests that the Commission may wish to consider possibly updating the mandate of the independent expert in view of the recent developments and evolutions of policies and programmes of international financial institutions with regard to debt and structural adjustment, and giving guidance to ensure complementarities and avoid duplication with a similar mandate under the Sub-Commission.

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Introduction

1. This annual report of the independent expert has been prepared pursuant to Commission resolution 2000/82, in which the Commission requested the independent expert to explore further, in his analytical annual report to the Commission, the interlinkages with trade and other issues, including HIV/AIDS, when examining the impact of structural adjustment and foreign debt and also to contribute, as appropriate, to the process entrusted with the follow-up to the International Conference on Financing for Development, with a view to bringing to its attention the issue of the effects of structural adjustment and foreign debt on the enjoyment of human rights, in particular economic, social and cultural rights. In the same resolution, the Commission also requested the independent expert, in the discharge of his mandate, to draft general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments, and to present a preliminary draft on this matter to the Commission at its sixty-first session and a final draft at the sixty-second session of the Commission.

2. Since his last report to the Commission, the independent expert undertook a mission to Kyrgyzstan from 7 to 15 June 2004, the report on which is submitted as an addendum to this report (E/CN.4/2005/42/Add.1). The independent expert wishes to thank the Government of Kyrgyzstan for its invitation and cooperation in realizing the mission, as well as the United Nations Resident Coordinator and the country team, the representatives of the International Monetary Fund (IMF) and the World Bank and non-governmental organizations based in Kyrgyzstan that provided valuable information and insights.

3. In the execution of his mandate, the independent expert continued to hold dialogues with the main relevant international financial institutions. To that end, he undertook a mission to Washington, D.C., for consultations with the World Bank and IMF on 14 and 15 October 2004. Pursuant to the request by the Commission in its resolution 2004/18 to contribute to the process entrusted with the follow-up to the International Conference on Financing for Development, the independent expert has been engaged in the exchange of ideas with the Financing for Development Office at the Department of Economic and Social Affairs of the Secretariat in New York, with a view to exploring an appropriate modality for his contribution to the follow-up process. As a part of such efforts, he sought the permission to address the Second Committee of the General Assembly in October 2004 when it considered the item on FfD follow-up. However, this did not materialize due to the lack of consensus in the Bureau of the Second Committee on the issue. The independent expert nevertheless hopes to contribute to the wider process of the FfD follow-up, including in the multi-stakeholder consultations to be organized by the FfD Office in 2005 on issues relevant to his mandate.

4. In the first section of the present report, the independent expert reviews the recent development in debt sustainability issues and relevant policies and programmes of the international financial institutions. In the second section, he reviews past work of the Commission and the Sub-Commission relevant to the question of draft general guidelines. In the

third section, he presents a suggested framework and some elements for consideration in the elaboration of draft general guidelines. The report concludes with general recommendations including a possible process that would facilitate the elaboration of the final guidelines.

I. DEBT SUSTAINABILITY: RECENT DEVELOPMENTS

5. **Origin of the debt.** The oil price shocks, high interest rates and recession in industrial countries, as well as low commodity prices in the 1970s and 1980s were major contributors to the debt build-up in the Heavily Indebted and Poor Countries (HIPC). To maintain their balance of payments, countries increased foreign borrowing to compensate for declining terms of trade as commodity prices dropped sharply in the early 1980s. Some poor countries increasingly resorted to new borrowing simply to service debt, and conditionalities were set by international financial institutions, curbing public expenditures and imposing structural adjustment programmes to reduce the dependence on foreign loans. This triggered a vicious cycle: funds for new investment became more scarce, economic growth slowed and as the debt became more unsustainable, more borrowings were made to service debt and more expenditures were reduced. Poor management and weak governance mechanisms in recipient countries also played a part in the debt build-up, as well as civil wars and conflicts, natural disasters and vagaries of weather. All of these meant that much of the foreign borrowing was squandered, bringing little long-term benefit in terms of capacity to produce and to earn foreign exchange reserves.

6. **Scale of external debt.** The external debt of developing countries has continued to rise. The total external debt of developing countries and countries with economies in transition increased by around US\$ 95 billion, or 4 per cent, in 2003 (A/59/219, para. 2). It stood at US\$ 2.3 trillion at the end of 2002, compared with US\$ 1.4 trillion in 1990. External debt as a percentage of developing countries' gross national income (GNI) increased from 34 per cent to 39 per cent over the same period. For low-income countries, external debt stood at about US\$ 523 billion, of which US\$ 399 billion was non-commercial guaranteed debt. A quarter of it, or US\$ 104 billion, was owed to the World Bank. The debt stock of developing, including middle-income, countries, rose from US\$ 500 billion in 1980 to US\$ 1 trillion in 1985 and around \$2 trillion in 2000. The 41 HIPC countries - among the poorest of the poor - saw their total indebtedness increase from US\$ 60 billion in 1980 to US\$ 105 billion in 1985 and US\$ 190 billion in 1990, and would have been, in the absence of debt reduction, of nearly US\$ 200 billion in 2000.

7. **Response from creditors.** The initial perception among creditors that the debt service problems of the poor countries were temporary meant that the measures adopted were also of ad hoc nature. Debt relief took the form of payment rescheduling, sometimes on concessional terms, sometimes coupled with new loan packages. In recognition of the need to have an elaborate mechanism developed to ensure that all of a country's bilateral creditors contributed equally, creditor Governments formed the Paris Club to find coordinated and sustainable solutions to the payment difficulties experienced by debtor countries. Although the Paris Club has, since 1983, reached agreements covering 80 debtor countries and a total debt worth US\$ 485 billion, it has remained a strictly informal mechanism based entirely on the voluntary will of its member creditor countries. Consequently, other than coordinating their actions, the Paris Club has neither evolved into a formal institution nor found sustainable solutions to the payment difficulties of the poor debtor countries.

8. **HIPC initiative.** Repeated Paris Club reschedulings for many debtors led official lenders to recognize that a new approach was needed to address the debt problem of low-income countries. By the mid-1990s, it had become evident that the combination of existing debt relief mechanisms, new official assistance, and policy packages aimed at reducing borrowing needs were still not enough to reduce debt to sustainable levels. At their Joint Annual meeting in October 1996, the IMF and the World Bank jointly launched the Heavily Indebted Poor Countries (HIPC) Initiative aimed at providing a comprehensive solution to the problems of poor country indebtedness. The goal of HIPC, as revised and enhanced in 1999, is to ensure deep, broad and fast debt relief with a strong link to poverty reduction. Twenty-seven low-income countries owing about US\$ 110 billion have qualified for potential debt relief of more than US\$ 54 billion to be provided under the Initiative.

9. **Status of HIPC.** Since September 2003, six countries (Ethiopia, Ghana, Guyana, Nicaragua, Niger and Senegal) have reached their completion points under the HIPC, bringing the total number of countries qualified to receive irrevocably all debt relief committed under the enhanced HIPC initiative to 14 as of end July 2004. For the 13 countries in the interim period that have reached the decision point but have not reached completion point because they have not fully met various conditions under the Initiative, including macroeconomic stability and structural reform, and the completion of full Poverty Reduction Strategy Papers (PRSPs) HIPC debt relief committed so far to these 27 countries either at the completion point or in the interim period, represents two-thirds reduction of their overall debt stock.

10. **Extension of the sunset clause.** Eleven countries have yet to reach their decision points under the HIPC Initiative. Nearly all of these countries have been affected by conflicts and accumulated large arrears. The sunset clause was included in the Initiative to prevent it from becoming a permanent facility, thereby minimizing the moral hazard and encouraging early adoption of programmes of reform. Under the sunset clause, eligible countries need to have adopted a programme of adjustment and reform supported by the IMF and IDA by the end of 2004 to be eligible for assistance under the Initiative. Due to the complexity of problems faced by these countries, the IMF and the World Bank estimated that there was no realistic prospect for them to meet the necessary requirements before the sunset provision came into effect at the end of 2004. Subsequently a two-year extension of the sunset clause until end-2006 was approved by the IMF/World Bank Board in October 2004. On the other hand, no new countries will be considered for HIPC eligibility, other than those 27 and 11 countries that are already on the list.

11. **Impact of HIPC.** Notwithstanding the many difficulties faced by the programme countries, the IMF and the World Bank report that debt relief under the HIPC Initiative has helped countries to increase poverty-reducing expenditures.¹ On the other hand, the analysis of the post-completion countries' performance revealed that for most of these countries, the net present value of debt-to-export ratios has been significantly higher than the original estimates. While exogenous shocks may have contributed to these developments, this shows that the HIPC is not a panacea for solving the debt crisis. The HIPC initiative is a debt reduction programme, and was not intended as offering a comprehensive solution to long-term debt sustainability.

12. **New approach to debt-sustainability.** As noted in the previous report of the independent expert (E/CN.4/2004/47), debt relief under the HIPC initiative has been recognized to be a necessary but insufficient condition for the highly indebted poor countries to achieve debt sustainability, long-term growth and poverty reduction goals. Moreover, the question remains open as regards middle-income and other low-income heavily indebted countries which are outside of the HIPC framework and will not be able to benefit from it in the absence of other such mechanisms to ensure debt sustainability of these countries and coordinated actions by creditors. In recognition of this, discussions are currently under way at the World Bank and IMF with a view to developing an operational framework for debt sustainability in low-income countries.² The current proposal is based on two broad pillars: (a) indicative country-specific external debt-burden thresholds that depend on the quality of the country's policies and institutions; and (b) an analysis and careful interpretation of actual and projected debt-burden indicators under a baseline scenario and in the face of plausible shocks. According to the World Bank and IMF, these two pillars, combined with other country-specific considerations, should help in developing an appropriate external borrowing strategy under which the amount and terms of new financing would facilitate progress towards achieving the Millennium Development Goals and generate a sustainable debt and debt-service outlook. The proposed framework has important policy implications for donors, creditors and borrowers. As such, the proposed framework should benefit from important human rights considerations that are being elaborated in the context of the Commission's request to develop draft general guidelines to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights.

13. **Millennium Development Goals: additionality of resources.** Many low-income countries have struggled to maintain their external debt at sustainable levels while also trying to meet development objectives under the Millennium Development Goals. It has become increasingly evident that financing the goals will require a substantial increase in resource flows to developing countries. One conservative estimate puts the need at US\$ 100 billion a year for the achievement of the goals. While the Monterrey Conference has resulted in pledges for some US\$ 16 billion for additional aid by 2006, this is still far short of a doubling of aid.³ These resources need to be provided in appropriate terms in order not to jeopardize debt sustainability in many low-income countries, particularly HIPCs. Essentially, this would imply, inter alia, that more assistance should be provided in grants form, more efforts on both recipient and donor sides should be made to increase the effectiveness of aid, and concessional lending should be streamlined to ensure long-term debt sustainability. The independent expert looks forward to contributing to the discussion of debt sustainability and the overall achievement of goal 8, including in the context of follow-up mechanisms entrusted with the follow-up to the Monterrey Consensus. He hopes to participate in at least one of the multi-stakeholder consultations to be organized by the Financing for Development Office in 2005 and in other pertinent events and meetings and to report to the Commission thereon in 2006.

14. **From adjustment lending to policy lending.** In terms of streamlining concessional lending, a welcome development has been the evolution of the World Bank's approach to adjustment lending. In August 2004, the World Bank announced that it would replace the old

one-size-fits-all structural adjustment lending with the new Development Policy Lending facility. This new facility, developed after two years of stakeholder consultations, consolidates a whole range of existing instruments, including sectoral adjustment loans and poverty reduction support credits.

15. The new policy builds on the lessons learned from earlier adjustment lending during the 1980s and the 1990s. Previously, structural adjustment loans were mainly directed at addressing the causes of a country's economic crisis, which sometimes involved adverse short-term social costs. In many cases, reductions in government spending were a necessary condition to restore economic balance, which led to disproportionate cuts in areas critical for the realization of economic, social and cultural rights such as education, health and other social spending.

16. According to the World Bank, the fundamental aim of the policy update is to help poor people by making the Bank a more effective development partner, and by making the Bank's policy-based lending a better instrument for supporting a country's own strategy for poverty reduction. The new policy lending will, therefore, emphasize the importance of country ownership and will not prescribe a blueprint for country policies. As such, many of the new operations will involve long-term structural changes such as strengthening of the education and health policies and improving a country's investment climate, as well as addressing weaknesses in governance, public expenditure management and public financial accountability. The new policy seeks to ensure that reforms will not be implemented without adequate consultations with stakeholders, or without social and environmental impact assessments.

17. The independent expert will continue to follow implementation of this development in the important lending instrument, which comprises around one-third of the overall World Bank commitments. Through analysis and consultations with the World Bank, both at its headquarters and country operations in the context of his future country missions, he will focus on examining the extent to which the new instrument represents a significant departure from the old structural adjustment lending and, more significantly, explore the extent to which it is possible to integrate human rights considerations into the Bank's new lending instrument with a view to learning some lessons for his elaboration of the general guidelines requested by the Commission. The important development described above does not merely mark an event in the long and difficult relationship between the World Bank as a creditor and poor debtor countries. It is also evidence of the significant evolution of the concept and nature of conditionality and structural adjustment. Consequently, the independent expert would venture to suggest that, taking into account this significant policy shift and other pertinent developments, the Commission may wish to consider the advisability of updating his mandate, including his title, to more accurately reflect the current state of play with respect to effects of the burden of foreign debt and the policies adopted to confront them on the ability of developing countries to fulfil the economic, social and cultural rights of their citizens.

II. REVIEW OF PAST INITIATIVES RELEVANT TO THE PROPOSED DRAFT GENERAL GUIDELINES

18. Before proceeding to elaborate draft general guidelines, the independent expert deemed it most appropriate to take stock of and benefit from the rich literature on prior relevant work and discussion within the framework of the Commission on Human Rights and the Sub-Commission.

19. The issue of foreign debt and structural adjustment has been raised by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) in 1988, when it appointed Mr. Danilo Türk as the Special Rapporteur on the realization of economic, social and cultural rights to study problems, policies and progressive measures relating to the more effective realization of these rights. The second progress report of the Special Rapporteur (E/CN.4/Sub.2/1991/17) focused on the effects of structural adjustment on economic, social and cultural rights and on the role of the international financial institutions, notably the World Bank and IMF, in the realization of these rights. Among the preliminary recommendations made by the Special Rapporteur in his report was the need to draft basic policy guidelines on structural adjustment and economic, social and cultural rights that served a dual purpose: (a) identify priority concerns in the field of human rights that would serve as a basis for dialogues with economic and financial institutions; and (b) assist in the design of policies pursued by international financial institutions.

20. In his final report (E/CN.4/Sub.2/1992/16) submitted to the Sub-Commission, the Special Rapporteur recommended that the following issues should be discussed for possible inclusion in the draft guidelines:

“(a) The impact of the adjustment process on national sovereignty;

“(b) The issue of popular participation in the development of adjustment programmes, and how most effectively to subject adjustment packages to public scrutiny prior to their implementation;

“(c) Integrating human rights yardsticks into any equation measuring the levels of achievement of adjustment programmes;

“(d) Exploring viable alternatives to the adjustment process;

“(e) The relationship between conditionalities and internal human rights obligations;

“(f) Precise measures to be employed to protect all social groups from the negative impact of adjustment, with a view to expanding existing measures of protection such as social safety nets;

“(g) Means of rectifying existing contradictions between the adjustment process and the avowed goal of the institutions which promote adjustment;

“(h) The human rights effects of liberalizing economies, free trade and the internationalization of the world economy;

“(i) Ways and means of ensuring that the rhetoric about protecting the poor, utilizing social safety nets and other new additions to the adjustment package actually have a positive and material impact;

“(j) Ways to ensure that the existing policy contradictions within both the World Bank and International Monetary Fund are rectified in the true interests of promoting economic, social and cultural rights” (para. 64).

21. This proposal to develop draft basic policy guidelines was endorsed by the Sub-Commission in its resolution 1992/29, which requested the Secretary-General to prepare such policy guidelines, which could serve as a basis for a continued dialogue between human rights bodies and the international financial institutions. A preliminary set of guidelines was submitted to the Sub-Commission in 1995 (E/CN.4/Sub.2/1995/10), essentially based on reports and studies submitted to the Commission on Human Rights and the Sub-Commission as well as the outcome of various international conferences, taking into account relevant international instruments and resolutions. The guidelines included elements of general principles, and those that can be considered for actions at national and international level.

22. These preliminary guidelines were discussed by the open-ended working group established by the Commission by its decision 1996/103 to elaborate policy guidelines in close cooperation with the Committee on Economic, Social and Cultural Rights. The working group met from 3 to 7 March 1997, but could not complete its discussion and recommended to the Commission that the working group should meet again and that its task should be facilitated by the appointment of an independent expert (E/CN.4/1997/20, para. 25).

23. The independent expert, Mr. Fantu Cheru, was appointed in 1998 and submitted three reports,⁴ the first of which contained many recommendations towards developing the policy guidelines requested by Commission decision 1996/103. While following the basic framework presented in the above-mentioned preliminary set of guidelines, these recommendations focused more on international aspects and included some controversial proposals such as “instituting human rights conditionality in future lending” and “establishing international mechanisms to retrieve money stolen by corrupt leaders”. The working group was not able to have substantive deliberations on these recommendations and to give guidance on further work on the subject.

24. At the same time, the Commission also decided, in its resolution 1998/24, to appoint a special rapporteur on the effects of foreign debt on the full enjoyment of economic, social and cultural rights. Later, the Commission decided to combine the two mandates and to establish a single mandate for an independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, a mandate the incumbent expert has been holding since November 2001.

25. Over the last years, the Commission has also established a number of mandates related to various economic, social and cultural rights. Several mandate holders have been addressing the issues of external debt, including in relation to the realization of the right to education,⁵ the right to adequate housing⁶ and the right to food.⁷ Treaty monitoring bodies, in particular the

Committee on Economic, Social and Cultural Rights, have been consistently addressing the issue of structural adjustment policies and external debt in their consideration of States parties' reports. The Committee on Economic, Social and Cultural Rights also adopted a number of general comments elaborating the nature of obligations of States parties, both in terms of international obligations and in terms of specific rights. General comment No. 2 addressed the need "to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment. ... Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives" (para. 9).

26. Taken together, the foregoing reveals a great number of studies and work conducted in the past several years within the framework of the Sub-Commission, the Commission special procedures and treaty bodies. While the subject of those guidelines was focused on structural adjustment policies, given the closely interrelated nature of external debt and structural adjustment, it would be important to keep them in mind while developing new general guidelines on debt. By the same token, the previous guidelines would require significant updating and discussion, in view of the recent developments in the policies of international financial institutions with regard to debt and structural adjustment, as highlighted in section I above.

27. The forthcoming work to develop general guidelines entrusted to the independent expert should be informed by the previous work undertaken within the United Nations human rights mechanisms and further discussed with international financial institutions and experts. In this connection, the independent expert also notes with interest a new development within the Sub-Commission, which in its decision 2003/109, requested that a working paper on the effects of debt and human rights be prepared (E/CN.4/Sub.2/2004/27) and subsequently decided that an expanded working paper be prepared for its fifty-seventh session in 2005. In view of the nature of the subject, the Commission may wish to suggest ways and give guidance as it may deem appropriate, both to the independent expert and to the Sub-Commission, with a view to avoiding duplications and parallel efforts.

III. SOME ELEMENTS FOR CONSIDERATION IN THE DEVELOPMENT OF PROPOSED DRAFT GENERAL GUIDELINES

28. In working towards developing a proposed framework and possible elements for consideration in the proposed draft general guidelines, the independent expert solicited views and suggestions from Member States, and international financial institutions such as the World Bank, IMF and regional development banks. Responses were received from Cuba, the Russian Federation, South Africa, IMF and the Asian Development Bank, for which the independent expert is grateful. The independent expert would have liked to benefit from more inputs from Member States, so as to include as wide a range of views and concerns as possible.

29. Taking into account the views and suggestions received, as well as relevant past work under the Commission and the Sub-Commission, provisions of international treaties, declarations and global conference outcomes, the independent expert suggests that the proposed general guidelines could address, inter alia, the following general questions as outlined below.

A. Elements of basic principles

30. As in previous such guidelines, the proposed draft general guidelines should lay out some important relevant basic principles derived from the Charter of the United Nations, international human rights instruments and various declarations adopted by the General Assembly, including the Declaration on Social Progress and Development (1969), the Charter of Economic Rights and Duties of States (1974), and the Declaration on the Right to Development (1986). One of the principles emphasized in these documents is the right to self-determination and sovereign equality of all States. The Charter of Economic Rights and Duties of States provides that “[e]conomic as well as political and other relations among States shall be governed, inter alia, by the following principles ... (b) Sovereign equality of all States” and, in article 1, that: “Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.”

31. Another aspect for consideration is that each State can choose its own means and goals of development, and should not be subject to specific recipes for economic policy or reform. Article 7 of the Charter of Economic Rights and Duties of States proclaims that:

“Every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and the responsibility to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development. All States have the duty, individually and collectively, to cooperate in eliminating obstacles that hinder such mobilization and use.”

32. Article 8 of the Declaration on Social Progress and Development also provides that “each Government has the primary role and ultimate responsibility of ensuring social progress and well-being of its people”.

33. It would also be appropriate that the general principles emphasize the indivisibility and interdependence of all human rights - civil, cultural, economic, political and social. Paragraph 5 of the Vienna Declaration and Plan of Action provides that “the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.

34. The guidelines should draw from article 2 of the Declaration on the Right to Development and reaffirm the human person as the central subject of development and should be the active participant and beneficiary of the right to development.⁸

35. The guidelines should also recall and reaffirm relevant commitments from declarations and outcomes of recent global summits and conferences, inter alia:

(a) The World Conference on Human Rights which called upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people;

(b) The determination expressed in the Millennium Declaration to deal comprehensively and effectively with the debt problems of low- and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term;

(c) The commitment contained in the Brussels Declaration adopted by the Third United Nations Conference on the Least Developed Countries (A/CONF.191/12), to provide the full financing and the speedy and effective implementation of the enhanced HIPC Initiative, which is essential for freeing domestic budgetary resources for poverty reduction, to provide debt relief to post-conflict countries within the flexibility provided under the HIPC framework, and to consider granting a moratorium on debt service payments of non-HIPC least developed countries in exceptional cases;

(d) The commitment contained in the Monterrey Consensus (A/CONF.198/11) to a new partnership between developed and developing countries; sound policies, good governance at all levels and the rule of law; mobilizing domestic resources, attracting international flows, promoting international trade as an engine for development, increasing international financial and technical cooperation for development, sustainable debt financing and external debt relief; and enhancing the coherence and consistency of the international monetary, financial and trading systems.

36. An important consideration that has been emphasized by the Commission on Human Rights, as in resolution 2000/82, is that “the exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of structural adjustment policies and economic reforms arising from debt”. The Committee on Economic, Social and Cultural Rights has consistently emphasized this point in several general comments it adopted.⁹ In its general comment No. 2 on international technical assistance measures (article 22 of the Covenant), the Committee reminds the States parties to the Covenant as well as the relevant United Nations agencies to make particular efforts to protect the most basic economic, social and cultural rights when structural adjustment programmes are in place, and that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment. Basic social programmes and expenditures, in particular those benefiting poor and vulnerable groups of society, must be protected from budgetary reduction resulting from structural adjustment programmes and/or the need to repay debts.

37. In the same general comment, the Committee emphasized that international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives. New loan agreements should not impair the institutional and financial capacity of indebted States to meet the social needs of their peoples or to respond effectively to any disasters or crises that might affect them.

B. Elements of guidelines for action at the national level

38. It is generally recognized that debt sustainability can be achieved only on the basis of a reasonable level of sustainable economic growth and social development. The general guidelines may therefore reaffirm that, as stated in the Monterrey Consensus, “an enabling domestic environment is vital for mobilizing domestic resources, increasing productivity, reducing capital flight, encouraging the private sector, and attracting and making effective use of international investment and assistance” (para. 10).

39. Numerous outcomes of global conferences and recent resolutions of the Commission on Human Rights reaffirmed that good governance is essential for sustainable development. The Monterrey Consensus recognized that “sound economic policies, solid democratic institutions responsive to the needs of the people and improved infrastructure are the basis for sustained economic growth, poverty eradication and employment creation. Freedom, peace and security, domestic stability, respect for human rights, including the right to development, and the rule of law, gender equality, market-oriented policies, and an overall commitment to just and democratic societies are also essential and mutually reinforcing” (para. 11). From a human rights perspective, the Commission, in resolution 2000/64, defined key attributes of good governance as transparency, responsibility, accountability, participation and responsiveness. The general guidelines may take into account these elements and further elaborate on actions to be taken to enhance these attributes of good governance in the context of debt repayments and management.

40. Fundamental economic, social and cultural rights and equal opportunities of access to basic social services must be established in law and practice, as required by the applicable international human rights instruments. Article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights requires the States parties to “take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”. The guidelines may offer some guidance on ways to ensure that countries use “resources released by debt relief as well as other sources of development finance in a manner that fully takes into account the interests of the poor”, as stipulated by the Programme of Action for the Least Developed Countries for 2001-2010 (A/CONF.191/11, para. 87 i (b)).

41. As emphasized in the Monterrey Consensus, “national comprehensive strategies to monitor and manage external liabilities, embedded in the domestic conditions for debt sustainability, including sound macroeconomic policies and public resource management are key elements in reducing national vulnerabilities” (para. 47). This would also require genuine “nationally-owned development policies and strategies including, where appropriate, Poverty

Reduction Strategy Papers (PRSPs), with full participation of stakeholders” (A/CONF.191/11, para. 87 i (c)). At the same time, the general guidelines may emphasize the duty of States to ensure, “inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income” (E/CN.4/1997/20, annex I, para. 32).

42. Participation and full transparency in the decision-making is another critical element of national actions. As stressed in general comment No. 25 of the Human Rights Committee, “Article 25 of the International Covenant on Civil and Political Rights recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. ... The conduct of public affairs ... is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers” (paras. 1 and 5). The general guidelines may emphasize that, in any negotiation and conclusion of debt relief agreements and new loan agreements, they must be formulated with the knowledge of the public and transparency, with legislative frameworks, institutional arrangements and mechanisms for consultation being established to ensure the effective participation of all components of society, and particularly of those segments most vulnerable to or disadvantaged by structural reform policies, in the design, application and evaluation of strategies, policies and programmes, as well as in the follow-up and systematic national supervision of their implementation. The public must be given the opportunity to present their own views before final decisions are taken, and the modification of plans must be made possible.

43. Before any change is made as a result of debt payment agreements or programmes, the social effects must be considered and determined, in cooperation and consultation with the workers, and appropriate measures taken to protect them against unemployment, disqualification or other adverse effects. As provided in article 9 of the International Covenant on Economic, Social and Cultural Rights, the general guidelines may take into account that the existence of sustainable and universal social security and welfare institutions, policies and programmes must be guaranteed in legislation and practice.

C. Elements of guidelines for action at the international level

44. International cooperation and assistance for development and thus for economic, social and cultural rights is an obligation for all States, as enshrined in articles 55 and 56 of the Charter of the United Nations, coupled with well-established principles of international law, and with the provisions of the International Covenant on Economic, Social and Cultural Rights.¹⁰ Sharing the responsibility between the debtors and creditors for preventing and resolving unsustainable debt situations is also a centrepiece of the Monterrey Consensus. The guidelines may offer a useful human rights framework for industrialized countries and international institutions to contribute to the creation of a favourable international environment, in particular through the transparency and democratization of decision-making in the bodies and institutions concerned with trade, finance, monetary policy, intellectual property and development assistance, and through greater international cooperation in the areas of assistance, financing and investment.

45. As such fundamental legal obligation, elaboration and adoption of guidelines would constitute an appropriate mechanism set up to ensure the accountability of all States and international institutions involved in the international cooperation. In the absence of such a mechanism, which will allow both active participation of, and benchmarks for, all stakeholders in assessing targets for resource flows, monitoring debt relief expenditures and collaborating on plans for future lending, debt relief initiatives including the HIPC Initiative will continue to be of limited value to many developing countries. The proposed general guidelines should call for the establishment of an international agreement enabling the creation of a debt restructuring mechanism - valid for all kinds of debt and creditors - and of an international arbitration mechanism that would have jurisdiction over past debt including onerous debt accumulated by developing countries.

46. Based on existing practices, the general guidelines may offer examples in which rich developed countries and international financial institutions are promoting flexible development cooperation approaches conducive to country ownership of development policies by poor countries and refrain from imposing strict conditionalities in the context of debt renegotiation agreements or relief initiatives. In this context, while it is too early to assess its full implications and benefits to developing countries, the new development policy lending, recently adopted by the World Bank to replace its existing adjustment lending instruments, may be further examined.

47. The general guidelines may also include a call to developed countries and international financial institutions to provide more assistance in the form of grants, so as not to jeopardize the already precarious debt sustainability situations in many heavily indebted poor countries. The guidelines should explicitly discourage a practice in which the debt cancellation or relief agreed upon be considered by the developed countries and international financial institutions as part of the amounts which they allocate to official development assistance. The guidelines may also recommend that there should be, as stated in the Declaration on Social Progress and Development, a "general easing of the terms of lending to the developing countries through low interest rates on loans and long grace periods for the repayment of loans, and an assurance that the allocation of such loans will be based strictly on socio-economic criteria free of any political considerations (art. 23 (a)).

48. The guidelines may also include a provision or recommendation to couple loan agreements with technical support services, where necessary and requested, that would facilitate the strengthening of the national budgeting processes and debt management capacity. The guidelines may further recommend that human rights principles and considerations be integrated into the overall cycle of national budgeting processes including participation by stakeholders in decision-making and oversight by the legislature. Monitoring of performance of loan agreements should be a joint debtor/creditor responsibility. In this regard, the role of independent institutions in monitoring the impact of public expenditures on human rights in particular economic, social and cultural rights would be of importance.

49. The guidelines may also address the need for international financial and commercial institutions to make rigorous assessments of the financial systems of the developed countries, in particular the possible repercussions of the economic policies adopted by developed countries which might affect the economic situation of developing countries.

50. Given the relationships between trade and development and the external debt of the developing countries, the guidelines should consider ways to protect economic, social and cultural rights in terms of improving the access to developed countries' markets of products of export interest to the developing countries and facilitating the diversification of developing countries' exports and contribute to improving the terms of trade, basically through the recovery of the prices of the commodities on which developing countries depend.

51. As a way to reduce vulnerability and likelihood of financial crisis, the guidelines could consider advocating for an increase in the resources devoted to crisis mitigation and reducing the conditionalities of contingent lines of credit granted to developing countries, such as the complete liberalization of their capital accounts, raising of their interest rates, free flotation of exchange rates and the reduction of their social spending.

52. Finally, the guidelines should encourage the World Bank, IMF and regional and subregional development banks and funds to consistently integrate human rights norms and principles into their policies, programmes and operations. Social impact assessments should be made mandatory in any lending operations, as proposed under the World Bank's new development policy lending instruments. It is also worth noting that the Asian Development Bank issued a Social Protection Strategy in 2001.¹¹ The guidelines should encourage international financial and commercial institutions to periodically inform the General Assembly, the Economic and Social Council and the Commission on Human Rights about the social effects of their policies on the full enjoyment of economic, social and cultural rights in the developing countries.

IV. CONCLUSION AND RECOMMENDATIONS

53. **Based on the foregoing regarding the relevant past initiatives, provisions of existing instruments and international commitments regarding external debt and structural adjustment, as well as preliminary views expressed by some Member States and international and regional financial institutions, the independent expert has attempted to compile some of the possible elements towards the elaboration of full draft general guidelines. It is evident that the process of such elaboration should benefit from more open participation and inputs from stakeholders concerned, in both debtor countries and creditors. In this preliminary report, the independent expert would like to submit the following general recommendations, including proposals for the next step in elaborating the general guidelines, and looks forward to feedback and guidance from the Commission:**

(a) **The Commission may wish to take note of the recent developments in the situation with respect to debt sustainability and evolution of structural adjustment lending in the policies and programmes of the World Bank;**

(b) **The Commission may wish to consider authorizing an expert consultation to discuss the proposed general guidelines, and invite the international financial institutions, notably the World Bank and IMF, as well as regional development banks and relevant United Nations agencies to contribute to the consultations.**

54. The Commission may wish to encourage the independent expert to:

(a) Continue to cooperate, in accordance with his mandate, with other rapporteurs, representatives, experts, members of working groups of the Commission and the Sub-Commission and the human rights treaty bodies, in working towards draft general guidelines to be followed by States in the decision-making and execution of debt repayments and structural reform programmes and further reviewing the effects of the burden of foreign debt and the policies adopted to face them on the capacity of the Governments of developing countries to adopt policies and programmes for the enjoyment of economic, social and cultural rights, including the role national budgeting processes can play for the progressive realization of such rights;

(b) Develop, in particular, additional ideas and elements for inclusion in draft general guidelines with regard to the role and responsibilities of private creditors;

(c) Further explore the interlinkages with trade and other issues, including HIV/AIDS, when examining the impact of structural adjustment policies and foreign debt on the enjoyment of human rights, particularly economic, social and cultural rights;

(d) Continue to explore ways and means to contribute, as appropriate, to the follow-up process of the International Conference on Financing for Development, with a view to bringing to its attention the issue of the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights.

55. Lastly, the independent expert wishes to seek the advice of and guidance from the Commission with regard to:

(a) Maximizing synergy and ensuring complementarities of work related to the question of external debt and structural adjustment between the mandate of the Special Rapporteur under the Commission and the Sub-Commission, bearing in mind the ongoing work under the Sub-Commission to establish a working paper on the effects of debt on human rights;

(b) Updating the mandate of the independent expert, including suitably amending the title of the mandate to better reflect the current situation, especially with regard to structural adjustment policies;

(c) Harmonizing avenues and modalities by which all special procedures mandate holders may undertake consultations with concerned intergovernmental bodies and institutions, including the relevant Committees of the General Assembly.

Notes

- ¹ International Monetary Fund and International Development Association, “Heavily Indebted Poor Countries (HIPC) Initiative - Status of implementation”, 20 August 2004, p. 12.
- ² International Monetary Fund and International Development Association, “Debt Sustainability in Low-Income Countries - Proposals for an Operational Framework and Policy Implications”, 3 February 2004; and “Debt Sustainability in Low-Income Countries: Further Considerations on an Operational Framework and Policy Implications”, 10 September 2004.
- ³ United Nations Development Programme, *Human Development Report 2003*, p. 11.
- ⁴ E/CN.4/1999/50, E/CN.4/2000/51 and E/CN.4/2001/56.
- ⁵ See, for example, E/CN.4/2000/6, paras. 14, 22 and 30-34; and E/CN.4/2001/52, paras. 51-54.
- ⁶ See, for example, E/CN.4/2002/59, para. 34 and E/CN.4/2003/5, para. 21.
- ⁷ E/CN.4/2003/54/Add.1, para. 53.
- ⁸ See also the policy guidelines of the open-ended working group (E/CN.4/1997/20, annex I, para. 6).
- ⁹ See in particular general comments No. 2, para. 9; No. 4 (The right to adequate housing), para. 19; No. 11 (Plans of action for primary education), para. 3; No. 12 (The right to adequate food), para. 41; No. 13 (The right to education), para. 60; No. 14 (The right to the highest attainable standard of health), para. 64; and No. 15 (The right to water), para. 60.
- ¹⁰ See general comments No. 3, para. 14 and No. 2.
- ¹¹ Available at http://www.adb.org/Documents/Policies/Social_Protection.

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